

FILED

MAY 19 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT ALLEN ALEMAN,

Petitioner - Appellant,

v.

MIKE KNOWLES,

Respondent - Appellee.

No. 05-16004

D.C. No. CV-01-05932-JKS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
James K. Singleton, District Judge, Presiding

Submitted May 15, 2006^{**}

Before: B. FLETCHER, TROTT and CALLAHAN, Circuit Judges.

California state prisoner Robert Allen Aleman appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition challenging his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conviction for possession of heroin. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Aleman contends that his Sixth Amendment rights to counsel and to an impartial jury were violated when the trial court denied counsel's motion to disclose juror information and for a continuance on his motion for a new trial based on alleged juror misconduct. The district court did not err in determining that the state court decision was not contrary to or an unreasonable application of clearly established federal law because Aleman has not shown that the trial court abused its discretion by denying the motion. *See United States v. Berry*, 627 F.2d 193, 197 (9th Cir. 1980).

Aleman has not raised any arguments relating to the Eighth Amendment claim certified by the district court. Accordingly, this claim is deemed waived. *See Mendoza v. Block*, 27 F.3d 1357, 1363 (9th Cir. 1994).

To the extent Aleman raises an uncertified Fourth Amendment claim, we construe his contention as a motion to expand the certificate of appealability, and we deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam). Aleman's request to stay proceedings pending the outcome of *Samson v. California*, 126 S. Ct. 34 (2005), is denied.

AFFIRMED.